

AMENDED IN SENATE JULY 3, 2003

AMENDED IN SENATE JUNE 19, 2003

AMENDED IN ASSEMBLY APRIL 30, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1688

**Introduced by Assembly Member Goldberg
(Coauthors: Assembly Members Koretz and Montanez)**

February 21, 2003

An act to add and repeal Part 8.5 (commencing with Section 2050) to Division 2 of the Labor Code, relating to car washes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1688, as amended, Goldberg. Car washes.

Existing law regulates various aspects of workplace and employee safety and health.

This bill would, until January 1, 2007, regulate the industry of car washing and polishing by providing specific recordkeeping requirements that employers of car washers must implement with regard to car washer wages, hours, and working conditions. The bill would require employers of car washers to register with the Labor Commissioner, pay a specified registration fee, and obtain a specified surety bond. Failure to register pursuant to these provisions would be a misdemeanor, punishable by specified penalties, thereby imposing a state-mandated local program. These penalties and registration fees would be deposited in the Car Wash Worker Fund, which this bill would

create, for disbursement by the commissioner, upon appropriation by the Legislature.

The bill would state the intent of the Legislature to require the Labor Commissioner to report on labor law violations and enforcement in the car washing; and polishing industry.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) California is home to hundreds of full-time car washes that
4 employ tens of thousands of car wash workers.
- 5 (b) The work performed by car wash employees is laborious,
6 fast-paced, and ~~often~~ *potentially* hazardous.
- 7 (c) Car wash employees work long hours and may service
8 hundreds of vehicles on any given workday.
- 9 (d) According to various legal advocates, the car wash industry
10 is plagued with labor law violations, including minimum wage,
11 overtime, and rest and meal period violations.
- 12 (e) Some car wash employees, commonly known as
13 “propineros,” are not paid a wage by their employers and receive
14 only the tips given by customers.
- 15 (f) Some other car wash employees are paid below the
16 minimum wage and not paid at an overtime rate for overtime hours
17 worked.
- 18 (g) A number of car wash employees have been harassed,
19 intimidated, and mistreated by their employers because of their
20 immigration status.
- 21 (h) As a result of low wages and widespread labor law
22 violations, some car wash employees are forced to work in
23 substandard working conditions ~~and live in poverty~~.



(i) Existing labor laws and enforcement efforts have failed to remedy these problems.

(j) Therefore, it is the intent of the Legislature, in enacting this act, to establish a system of registration, bonding requirements, and enforcement to impose prompt and effective criminal and civil sanctions for the violation of the provisions set forth in this act or any provision of law applicable to the employment of workers in the car washing and polishing industry.

SEC. 2. Part 8.5 (commencing with Section 2050) is added to Division 2 of the Labor Code, to read:

PART 8.5. CAR WASHES

CHAPTER 1. GENERAL PROVISIONS

2050. The enactment of this part is an exercise of the police power of the State of California for the protection for the public welfare, prosperity, health, safety, and peace of its people. The civil penalties provided by this chapter are in addition to any other penalty provided by law.

2051. As used in this part:

(a) “Car washing and polishing” means washing, cleaning, drying, polishing, detailing, servicing, or otherwise providing cosmetic care to vehicles. “Car washing and polishing” does not include motor vehicle repair, as defined in Section 9880.1 of the Business and Professions Code.

(b) (1) “Employer” means any individual, partnership, corporation, limited liability company, joint venture, or association engaged in the business of car washing and polishing that engages any other individual in providing those services.

(2) “Employer” does not include any charitable, youth, service, veteran, or sports group, club, or association that conducts car washing and polishing on an intermittent basis to raise funds for charitable, education, or religious purposes. “Employer” does not include any licensed vehicle dealer, car rental agency, or automotive repair business that conducts car washing and polishing ancillary to its primary business of selling, leasing, or servicing vehicles. “Employer” does not include any self-service *car wash* or automated car wash that has no more than ~~one~~

1 ~~employee for cashiering~~ *the equivalent of two full-time employees*
2 *for cashiering or maintenance* purposes only.

3 (c) “Employee” means any person, including an alien or
4 minor, who renders *actual* car washing and polishing services in
5 any business for an employer, whether for tips or for wages, and
6 whether wages are calculated by time, piece, task, commission, or
7 other method of calculation, and whether the services are rendered
8 on a commission, concessionaire, or other basis.

9 (d) “Commissioner” means the Labor Commissioner.

10 2052. Every employer shall keep accurate records for three
11 years, showing all of the following:

12 (a) The names and addresses of all employees engaged in
13 rendering actual services for any business of the employer.

14 (b) The hours worked daily by each employee, including the
15 times the employee begins and ends each work period.

16 (c) All gratuities received daily by the employer, whether
17 received directly from the employee or indirectly by deduction
18 from the wages of the employee or otherwise.

19 (d) The wage and wage rate paid each payroll period.

20 (e) The age of all minor employees.

21 (f) Any other conditions of employment.

22 2053. The Division of Labor Standards and Enforcement
23 shall enforce this chapter. The commissioner shall adopt all
24 regulations and rules necessary to carry out the provisions of this
25 chapter.

26 CHAPTER 2. REGISTRATION

27
28
29 2054. Every employer shall register with the commissioner
30 annually.

31 2055. The commissioner may not permit any employer to
32 register, nor may the commissioner permit any employer to renew
33 registration until all of the following conditions are satisfied:

34 (a) The employer has applied for registration to the
35 commissioner by presenting proof of compliance with the local
36 government’s business licensing or regional regulatory
37 requirements.

38 (b) The employer has obtained a surety bond issued by a surety
39 company admitted to do business in this state. The principal sum

1 of the bond shall be not less than ten thousand dollars (\$10,000).
2 The employer shall file a copy of the bond with the commissioner.

3 (1) The bond required by this section shall be in favor of, and
4 payable to the people of the State of California and shall be for the
5 benefit of any employee damaged by his or her employer's failure
6 to pay wages, interest on wages, or fringe benefits, or damaged by
7 violation of Section 351 or 353.

8 (2) Thirty days prior to the cancellation or termination of any
9 surety bond required by this section, the surety shall send written
10 notice to both the employer and the commissioner, identifying the
11 bond and the date of the cancellation or termination.

12 (3) An employer may not conduct any business until the
13 employer obtains a new surety bond and files a copy of it with the
14 commissioner.

15 (c) The employer has documented that a current workers'
16 compensation insurance policy is in effect for the employees.

17 (d) The employer has paid a registration fee to the
18 commissioner in the amount of one hundred fifty dollars (\$150)
19 plus an additional seventy-five dollars (\$75) for each branch
20 location maintained in this state by the employer.

21 2056. When a certificate of registration is originally issued or
22 renewed under this chapter, the commissioner shall provide
23 related and supplemental information to the registrant regarding
24 business administration and applicable labor laws.

25 2057. Proof of registration shall be by an official Division of
26 Labor Standards Enforcement registration form. Each employer
27 shall post the registration form where it may be read by the
28 employees during the workday.

29 2058. At least 30 days prior to the expiration of each
30 registrant's registration, the commissioner shall mail a renewal
31 notice to the last known address of the registrant. However,
32 omission of the commissioner to provide the renewal notice in
33 accordance with this subdivision may not excuse a registrant from
34 making timely application for renewal of registration, may not be
35 a defense in any action or proceeding involving failure to renew
36 registration, and may not subject the commissioner to any legal
37 liability.

38 2059. The commissioner shall require that, as a condition of
39 continued registration, the following employers shall maintain a
40 bond issued by a surety company admitted to business in this state:

1 (a) A twenty thousand dollar (\$20,000) wage bond is required
2 if an employer has violated any federal or state labor law
3 governing the minimum wage and overtime, child labor,
4 occupational safety and health, or worker's compensation or has
5 been subject to a final judgment for failure to pay wages due his
6 or her car wash employees.

7 (b) A twenty-five thousand dollar (\$25,000) wage bond is
8 required if an employer has *failed to register with the*
9 *commissioner pursuant to Section 2055* committed multiple
10 violations of federal or state labor laws governing the minimum
11 wage and overtime, child labor, occupational safety and health, or
12 worker's compensation or has been subject to more than one final
13 judgment for unpaid wages in a three-year period. "Multiple
14 violations" as used in this subdivision, means one or more
15 violations occurring during three consecutive years or three or
16 more violations in a three-year period.

17 (c) The bond required by this section shall be in favor of, and
18 payable to the people of the State of California, and shall be for the
19 benefit of any employee damaged by his or her employer's failure
20 to pay wages, interest on wages, or fringe benefits, or damaged by
21 violation of Section 351 or 353.

22 2060. No employer may conduct any business without
23 complying with the registration and bond requirements of this
24 chapter.

25 2061. The commissioner may not renew the registration of
26 any employer until all of the following conditions are satisfied:

27 (a) The employer has executed a written application, in a form
28 prescribed by the commissioner, subscribed, and sworn by the
29 employer containing the following:

30 (1) A statement by the employer of all facts concerning the
31 form of ownership.

32 (2) If the applicant is a corporation, the corporate name, the
33 names, residential addresses, and telephone numbers of all the
34 officers of the corporation, the names of all persons exercising
35 management responsibility in the applicant's office, and the names
36 and addresses of all persons having a financial interest of 10
37 percent or more in the business, and the percentage of financial
38 interest owned by each of those persons.

39 (3) If the applicant employer is other than a corporation, the
40 names and addresses of all persons except bona fide employees on

1 regular salaries, who are financially interested, either as partners,
2 associates, or profit sharers, in the employer's car wash business
3 together with the amount of their respective interests.

4 (b) The commissioner, after investigation, is satisfied as to the
5 ~~character, competency, and responsibility of the employer.~~

6 ~~(c) The employer by written examination demonstrated the~~
7 ~~degree of knowledge of the current laws and administrative~~
8 ~~regulations concerning car washing and polishing employers that~~
9 ~~the commissioner deems necessary for the safety and protection of~~
10 ~~car wash employees and the public. This examination shall include~~
11 ~~a demonstration of knowledge of the current laws and regulations~~
12 ~~regarding wages, hours, and working conditions and occupational~~
13 ~~safety and health.~~

14 ~~(d) The commission shall charge a fee to employers taking the~~
15 ~~examination required by subdivision (c), which shall be sufficient~~
16 ~~in the aggregate to defray the costs incurred in administering the~~
17 ~~examinations.~~

18 2062. The commissioner may not register or renew the
19 registration of an employer in any of the following circumstances:

20 (a) The employer has not fully satisfied any final judgment for
21 unpaid wages due to an employee or former employee of a
22 business for which the employer is required to register under this
23 chapter.

24 (b) The employer has failed to remit the proper amount of
25 contributions required by the Unemployment Insurance Code or
26 the Employment Development Department had made an
27 assessment for those unpaid contributions against the employer
28 that has become final and the employer has not fully paid the
29 amount of delinquency for those unpaid contributions.

30 (c) The employer has failed to remit the amount of Social
31 Security and Medicare tax contributions required by the Federal
32 Insurance Contributions Act (FICA) to the Internal Revenue
33 Service and the employer has not fully paid the amount or
34 delinquency for those unpaid contributions.

35 2063. An employer who fails to register pursuant to Section
36 2054 is guilty of a misdemeanor punishable by a fine of not more
37 than one hundred dollars (\$100) for each calendar day the
38 employer conducts car washing and polishing while unregistered.

~~2064. No local agency may issue a business license or permit to an employer for a car washing and polishing business without proof that the employer is registered pursuant to Section 2055.~~

~~2065.~~

2064. (a) The Car Wash Worker Fund is established in the State Treasury. Seventy-five dollars (\$75) of each registrant's annual registration fee, required pursuant to subdivision (d) of Section 2055, shall be deposited in this fund. In addition, fines collected pursuant to Section ~~2.4~~ 2063 shall be deposited into the fund. Moneys from the fund shall be disbursed, upon appropriation by the Legislature, by the commissioner only to persons determined by the commissioner to have been damaged by the failure to pay wages and penalties and other related damages by any car wash or polishing employer, to ensure the payment of wages and penalties and other related damages. Any disbursed funds subsequently recovered by the commissioner shall be returned to the fund.

(b) ~~Fifty~~ Upon appropriation by the Legislature, fifty percent of the remainder of the registrant's annual registration fee not deposited into the fund pursuant to ~~Section 2063 subdivision (d) of Section 2055~~ shall be applied to costs incurred by the commissioner in administering the provisions of this section and enforcement and investigation of the car washing and polishing industry. ~~The~~ Upon appropriation by the Legislature, the other 50 percent of those funds shall be dedicated to create one or more positions to enforce labor law violations in the car wash industry. Any registration funds not used to fund enforcement positions shall be refunded to registered car washes in pro rata share.

CHAPTER 3. SUCCESSORSHIP

~~2066.~~

2065. A successor to any employer that is engaged in car washing and polishing that owed wages and penalties to the predecessor's former employee or employees is liable for those wages and penalties if the successor meets any of the following criteria:

(a) Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor employer.

1 (b) Shares in the ownership, management, control of the labor
2 relations, or interrelations of business operations with the
3 predecessor employer.

4 (c) Employs in a managerial capacity any person who directly
5 or indirectly controlled the wages, hours, or working conditions of
6 the affected employees of the predecessor employer.

7 (d) Is an immediate family member of any owner, partner,
8 officer, or director of the predecessor employer of any person who
9 had a financial interest in the predecessor employer.

10
11 CHAPTER 4. OPERATION
12

13 ~~2067.~~

14 2066. This part shall remain in effect only until January 1,
15 2007, and as of that date is repealed, unless a later enacted statute,
16 that is enacted before January 1, 2007, deletes or extends that date.

17 SEC. 3. It is the intent of the Legislature to instruct the Labor
18 Commissioner, prior to January 1, 2007, to study and report to the
19 Legislature on the status of labor law violations and enforcement
20 in the car washing and polishing industry.

21 SEC. 4. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.